

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0085-09
Bill No.: HCS for SCS for SB 60
Subject: Elderly; Estates, Wills and Trusts; Health Care; Insurance, Property
Type: Original
Date: April 26, 2011

Bill Summary: This proposal relates to judicial procedures.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)
Total Estimated Net Effect on General Revenue Fund	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Missouri Office of Prosecution Services	\$100,000	\$100,000	\$100,000
Child Support Enforcement Collections	Up to \$353,861	Up to \$837,935	Up to \$863,073
Total Estimated Net Effect on <u>Other</u> State Funds	Up to \$453,861	Up to \$937,935	Up to \$963,073

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 24 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Federal Funds	\$0 or (\$30,000,000)	\$0 or (\$60,000,000)	\$0 or (\$60,000,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$30,000,000)	\$0 or (\$60,000,000)	\$0 or (\$60,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
General Revenue	-1 FTE	-1 FTE	-1 FTE
Total Estimated Net Effect on FTE	-1	-1	-1

☒ Estimated Total Net Effect on All funds expected to exceed \$100,000 savings or (cost).

☒ Estimated Net Effect on General Revenue Fund expected to exceed \$100,000 (cost).

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2012	FY 2013	FY 2014
Local Government	Unknown to (Unknown)	Unknown to (Unknown)	Unknown to (Unknown)

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Economic Development, Department of Natural Resources, Department of Health and Senior Services, Missouri Senate, Department of Mental Health, Office of Administration - Division of Accounting, Department of Labor and Industrial Relations, Department of Higher Education, Missouri Ethics Commission, Department of Agriculture, Missouri Lottery Commission, Administrative Hearing Commission, MOSERS, Department of Insurance, Financial Institutions and Professional Registration, Office of the Governor, Office of the State Auditor, Office of the State Treasurer, and the Department of Public Safety - Highway Patrol, Missouri Veteran's Commission, Division of Alcohol and Tobacco Control, Division of Fire Safety, and Capitol Police** each assume the proposal would not fiscally impact their respective agencies.

Officials from the **Office of the Attorney General (AGO)** assume that any potential costs arising from this proposal can be absorbed with existing resources.

Officials from the **Office of the Secretary of State (SOS)** assume many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the Secretary of State's Office for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, we also recognize that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what our office can sustain with our core budget. Therefore, we reserve the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Officials from the **Department of Elementary and Secondary Education (DESE)** state there is no anticipated state cost to the foundation formula associated with this proposal. To the extent fine revenues exceed 2004-2005 collections, any increase in this money distributed to school districts increases the deduction in the foundation formula the following year. Therefore the affected districts will see an equal decrease in the amount of funding received through the formula the following year; unless the affected districts are hold-harmless, in which case the districts will not see a decrease in the amount of funding received through the formula (any increase in fine money distributed to the hold-harmless districts will simply be additional money). An increase in the deduction (all other factors remaining constant) reduces the cost to

ASSUMPTION (continued)

the state of funding the formula.

This proposal contains provisions from numerous other bills, including:

HCS for HB 111 as perfected (Section 571.063) - fraudulent purchase of a firearm:

For the purpose of this section, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide competent, effective representation for any new cases arising where indigent persons are charged with the proposed new crime of fraudulent purchase of a firearm - a new Class D felony or faced with the enhanced penalties for possessing a firearm while also in possession of controlled substances - a new unlawful use of a weapons charge.

Passage of bills increasing penalties on existing crimes, or creating new crimes, requires the State Public Defender System to further extend resources. While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide competent and effective representation in all its cases.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

In response to a similar part of HCS for HB 294 (et al), officials from the **Department of Corrections (DOC)** stated this part of the proposal makes various firearms changes. Penalty provisions, the component of the bill to have potential fiscal impact for DOC, is for up to a class D felony.

Currently, the DOC cannot predict the number of new commitments which may result from the creation of the offense(s) outlined in this proposal. An increase in commitments depends on the utilization by prosecutors and the actual sentences imposed by the court.

If additional persons are sentenced to the custody of the DOC due to the provisions of this legislation, the DOC will incur a corresponding increase of direct offender costs either through incarceration (FY10 average of \$16.397 per offender, per day, or an annual cost of \$5,985 per inmate) or through supervision provided by the Board of Probation and Parole (FY10 average of \$3.92 per offender, per day or an annual cost of \$1,431 per offender).

ASSUMPTION (continued)

The following factors contribute to DOC's minimal assumption:

1. DOC assumes the narrow scope of the crime will not encompass a large number of offenders;
2. The low felony status of the crime enhances the possibility of plea-bargaining or imposition of a probation sentence;
3. The probability exists that offenders would be charged with a similar but more serious offense or that sentences may run concurrent to one another .

In summary, supervision by the DOC through probation or incarceration would result in some additional costs, but it is assumed the impact would be \$0 or a minimal amount that could be absorbed within existing resources.

HCS for HBs 253 & 398 (Numerous sections):

Sections 32.056 & 301.146 (special license plates & Revenue registration information):

Officials from the **Department of Revenue (DOR)** state this part of the proposal requires DOR, upon request , to issue special motor vehicle registration plates and drivers licenses to Article V Missouri judges and article III federal judges, and “the members of the federal judiciary,” which could potentially be interpreted broadly to include any person employed as part of the federal court system.

The potential impact for the proposed change in this section is unknown. DOR does not know how many eligible persons “with the judicial power of the state” would have a “legitimate law enforcement or public safety purpose” to obtain a “special” driver license or license plates under this section. Currently, there are no fees allowed under this section for the documents themselves, therefore, the fiscal impact is unknown. DOR would have to pay the vendor cost of \$2.16 per card for the additional “special” driver license and \$3.26 for each set of plates issued under this section.

According to the Office of State Courts Administrator (OSCA), Missouri has 7 Supreme Court judges, 32 Appellate Court judges, and 335 Circuit/Associate Court judges. OSCA also states that municipal court judges are empowered through the Circuit Court system and should be considered under this proposal. There are 540 Municipal court judges and 35 Federal judges that would fall into this proposal.

ASSUMPTION (continued)

DOR currently has a process in place for designated persons to be issued confidential license plates if requested. This proposal expands the parameters of who may be included in the confidential records system which would increase the DOR work load to record this information. DOR made the following assumptions:

- There are 949 total judges that would be available for this process.
- It is assumed that only 10% (95) of those judges will participate in FY 12.
- As knowledge and awareness increases it is assumed that 50% (475) will participate in FY 13, and 75% (712) in FY 14.
- A Revenue Processing Tech I can process 5 confidential transactions per hour resulting in 19 hours of overtime in FY 12 at a cost of \$288; 98 hours of overtime in FY 13 at a cost of \$1,481; and 147 hours of overtime in FY 14 at a cost of \$2,221.

Oversight assumes DOR is provided with core funding to handle a certain amount of activity each year. **Oversight** assumes DOR could absorb the costs related to this proposal. If multiple bills pass which require additional staffing and duties at substantial costs, DOR could request funding through the appropriation process.

Sections 56.089, 302.020, 302.321, 303.025, 311.325 (Prosecutor Diversion Program);

In response to a previous version of the bill (0590-01, HB 253), officials from the **County of Platte** stated this proposal would have a positive impact for the State of Missouri and county governments. While the precise amount of the impact is difficult to estimate, a portion of the funds generated will fund statewide court automation. The remaining funds would offset the costs for diverting cases from criminal prosecution, which will also decrease state-funded public defender caseloads and state-funded criminal court caseloads.

Officials from the **Department of Transportation (MoDOT)** state section 56.089 allows for use of prosecution diversion programs that would authorize a criminal case to be diverted from prosecution. Federal law does not allow for this. This will result in a possible impact to Federal-Aid Highway Funds. If this legislation is enacted, the United States Department of Transportation (USDOT) would sanction Missouri's federal-aid highway funds, which would significantly and negatively impact MoDOT. The Department would lose 5% (\$30 million) the

ASSUMPTION (continued)

first year, then 10% (\$60 million) each year after. MoDOT states they are waiting on a opinion letter to be issued by the USDOT.

Oversight will range the fiscal impact to MoDOT from this part of the proposal from \$0 (will not put Missouri out of compliance with USDOT) to MoDOT's estimates.

Officials from the **Office of Administration - Budget and Planning (BAP)** state the provisions contained in this section will impact both Total State Revenues and 18e as a result of the revenue derived from a new \$5 fee per case being deposited into the Missouri Office of Prosecution Services Fund within the State Treasury from the Administrative Handling Cost Fund within the county treasuries. Budget and Planning defers to Office of State Courts Administrator and/or Missouri Office of Prosecution Services for an estimate on how much revenue will be generated by the new fee. BAP also defers to the Department of Corrections for a determination of any costs associated with supervision of diverted offenders.

BAP also states these provisions add new fines for various motor vehicle-related violations. If the fines are deposited with the state, there will be a TSR impact. BAP defers to Department of Revenue for an estimate on how much revenue will be generated by the new fines.

BAP also states Section 311.325 creates new fines related to minor in possession of alcohol and will impact TSR. If the fines are deposited with the state, there will be a TSR impact. Budget and Planning defers to Department of Revenue and/or Department of Public Safety for an estimate on how much revenue will be generated by the new fines.

Officials from the **Office of the State Public Defender (MSPD)** state the SPD provided representation in 5,941 cases in the designated categories during fiscal year 2010. That number includes all cases, not just the first offenses. The MSPD does not track first offenses separately from subsequent cases.

The creation of an inclusion of defender clients in any new diversion programs authorized by the other part of the legislation is at the discretion of the prosecutor. As a result, MSPD has no way of knowing how many cases this might save us, but it will undoubtedly save MSPD some.

Oversight assumes the MSPD could see a reduction in caseloads if the proposal passes; however, Oversight assumes the MSPD would not realize any fiscal impact from the proposal.

ASSUMPTION (continued)

Officials from the **Office of Prosecution Services (OPS)** state this proposal will have a positive fiscal impact on the agency. The revenue that would be generated under this proposal would be dependent on the number of cases that prosecutors place into diversion programs. OPS states because no such formal structure currently exists, there is no existing benchmark on which to base an estimate of a dollar amount.

Officials for the **St. Louis County Prosecuting Attorney** assume that the County would generate approximately \$30,000.00 of revenue if the County diverts 60 felony cases and 150 misdemeanors. The County assumes the Department of Corrections, Board of Probation and Parole will supervise these cases at their expense pursuant to Section 217.777, RSMo.

Officials from the **Department of Corrections (DOC)** state this deals with deferred prosecution for misdemeanors and felonies. It supplies minimum guidelines for the diversion and payment of restitution and an administration fee from the offender. The diversion could include programs and community work. Probation and Parole (P&P) staff are frequently assigned to work with diversion program clients and passage of this bill has the capability to increase caseloads for P&P staff. Additional FTE may be required to meet the demands of the diversion cases dependent on how the program is set up and utilized and the resulting impact on P&P. Therefore any fiscal impact due to passage of this proposal is Unknown per each year for the DOC.

Oversight assumes this bill authorizes prosecuting attorneys to utilize prosecution diversion programs and changes the penalties for various first offense misdemeanors. Oversight assumes it is unknown how many cases prosecutors would place into diversion programs; therefore, the impact to the DOC is an unknown cost.

Oversight assumes the administrative handling costs would be deposited into the county Administrative Handling Cost Fund and then distributed to the county prosecuting attorney. Oversight assumes the administrative handling cost would not be collected on all cases. Therefore, Oversight assumes the deposits in this fund to be equal to the costs of the county prosecuting attorney.

Oversight assumes the additional cost of five dollars per case paid by persons paying restitution would be deposited into the Missouri Office of Prosecution Services Fund. Oversight assumes the additional five dollars would not be collected on all cases. Oversight assumes the deposits into this would be used by the Office of Prosecution Services, as specified in Sections 56.750, 56.755, and 56.760, RSMo. Oversight assumes the deposits to be equal to the costs of the Office of Prosecution Services.

ASSUMPTION (continued)

Sections 56.807 & 488.026 (Criminal case surcharge);

Officials from the **Office of Administration - Budget and Planning (BAP)** state this section expands the population subject to the criminal case surcharge. This section will impact both TSR and 18e. BAP defers to Office of State Courts Administrator for an estimate on how much revenue will be generated.

Officials from the **Joint Committee on Public Employee Retirement (JCPER)** has reviewed this proposal and has determined an actuarial study is not needed under the provisions of section 105.660, subdivision (10).

Officials from the **Office of State Courts Administrator (CTS)** assume this part of the proposal would allow a \$4 surcharge for the Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund to be assessed and against persons who pled and paid a fine through a fine collection center.

Based on data for FY 10, CTS assumes there are approximately 142,904 fine collection center cases on which this \$4.00 surcharge could be applied. CTS anticipates the revenue from a \$4.00 surcharge would be approximately \$571,616 in any given year.

In response to identical legislation filed this year (HB 396, 0798-02), officials from the **Prosecuting Attorneys and Circuit Attorneys Retirement System Fund** assumed based on the number of cases handled by the fine collection center for the fiscal year ending in June 2010, this proposal, if enacted, would increase the annual receipts of the Prosecutors and Circuit Attorneys Retirement System by approximately \$832,000.

Sections 221.025, 221.105, 544.455, 544.470 & 557.011 (electronic monitoring);

Officials from the **Office of Administration - Budget and Planning (BAP)** state these provisions would require the State to pay electronic monitoring costs for individuals currently not covered by the State. BAP defers to Department of Corrections for an estimate on how much cost will be incurred as a result of these provisions.

In response to a similar proposal from 2010 (HB 2442), officials from **St. Louis County** stated the overall fiscal impact to Justice Services would be favorable. The cost benefit would be the potential for persons to be on Electronic Home Detention (EHD) as opposed to being in jail and the associated cost. However, a need would exist to hire an additional case manager to monitor

ASSUMPTION (continued)

persons on EHD as the number of persons on EHD increases. Reimbursement by the person on EHD and by the state would be critical to keeping the fiscal impact more manageable.

Officials from the **Department of Corrections (DOC)** state this would allow the use of electronic monitoring program (EMP) as an alternative to jail incarceration for non-violent offenders. This includes pre-trial and post trial. Charges for electronic monitoring can be assigned to the individual. If the judge finds the offender unable to afford the costs associated with electronic monitoring the state shall then reimburse the county for any costs associated with electronic monitoring. This is handled in the same manner as jail time costs. It does state that all costs of electronic monitoring are included. DOC would be required to pay for all costs of EMP, including costs for which the state was not previously liable. This will cost more than the savings generated by the use of EMP although the fiscal impact is unknown for the DOC per each year.

According to the Section 221.105, the Department of Corrections must reimburse a county for the actual cost of housing a prisoner, up to \$37.50 per day. The appropriation for this reimbursement to the county level from the Department of Corrections totaled \$38,060,616 for the current budget year (Section 9.265 of HB 2009), \$43,060,616 for FY 2010 and \$43,060,616 again in FY 2009. **Oversight** assumes the proposal could result in a net savings to the state if reimbursement for the cost of house arrest with electronic monitoring would be lower than the reimbursement rate for jail confinement. The legislation does not state what the reimbursement rate will be for the electronic monitoring; however, Oversight assumes the rate will be lower than the rate for jail. Therefore, Oversight will assume the proposal could result in net unknown savings to the General Revenue Fund. Oversight is also unsure of how many such offenders would be sentenced to house arrest under the new program.

Oversight assumes the proposal would not have a fiscal impact to counties since they can receive reimbursement from the state for either jailed confinement under the current statutes or under the new option of house arrest with electronic monitoring under this new program.

Sections 454.425 & 454.548 (Family Support Division within Social Services shall charge a fee of \$60 for a review);

Officials from the **Office of Administration - Division of Budget and Planning (BAP)** state these sections allow the Department of Social Services to charge a new \$60 fee for collection of child support and could increase TSR and impact 18e. BAP defers to Department of Social Services for an estimate on how much revenue will be generated by the new fee.

ASSUMPTION (continued)

Officials from the **Department of Social Services** did not respond to Oversight's fiscal note request. However, in response to a previous version (2010 session, HB 1906) the officials from the **Department of Social Services-Family Support Division (FSD)** stated the following:

SFY 2011: In its SFY 2011 budget request, FSD requested funding of \$137,112 in one-time costs related to a one-time mailing of fee notifications and system changes necessary to implement the child support fees proposed in this bill (\$46,618 would be funded with Child Support Enforcement Collections Funding; and \$90,494 with federal funding).

- To meet federal notification requirements, the division would need to mail notices to never-assistance recipients of services. The division expects it will need to mail approximately 123,000 notices at a cost of \$0.36 per notice for a one-time cost of \$44,280. After the first year, notice to affected entities will be incorporated into existing agency forms/notices at no additional cost.
- It is estimated it would take Office of Administration's IT staff 1,200 hours to make the necessary system changes to the Missouri Automated Child Support Systems (MACSS) to implement the fees for a one-time cost of \$92,832 (1,200 hours x \$77.36 hourly rate).

In addition, in FY 2011, the division estimates that:

- Approximately 3,573 cases would be subject to the review fee, resulting in \$214,380 in fee collections (\$72,889 state share).
- Approximately 4,113 cases would be subject to the modification fee. The division estimates that 2,879 will be subject to a fee of \$175 and 1,234 will be subject to a fee of \$350, resulting in \$935,725 in fee collections (\$318,147 state share).
- Approximately 19,243 cases would be subject to the federal income tax refund offset fee annually, resulting in \$481,075 in fee collections (\$163,566 state share).
- Expanding the annual \$10 annual payment processing fee to include IVD cases would result in an additional \$481,580 in fee collections annually (\$163,737 state share).

There is a potential total annual collection of fees of \$2,112,760 (\$718,339 state share). However, due to implementation and the Division's ability to collect the fees, the Division does not expect to collect the full amount in the first year. The Division only anticipates collecting a little more than half of the fees in the first year. Therefore, in FY11 based on the following calculations, the Division believes of the fees collected, \$335,861 could be used to offset GR expenditures. In the FY 2011 FSD Budget Request, there was a core cut of GR in the County Reimbursement core.

ASSUMPTION (continued)

SFY 2012: In FY 2012, the division estimates that:

- Approximately 4288 cases would be subject to the review fee, resulting in \$257,280 in fee collections (\$87,475 state share).
- Approximately 4936 cases would be subject to the modification fee. The division estimates that 3455 will be subject to a fee of \$175 and 1481 will be subject to a fee of \$350, resulting in \$1,122,925 in fee collections (\$381,795 state share).
- Approximately 20,256 cases would be subject to the federal income tax refund offset fee annually, resulting in \$506,400 in fee collections (\$172,176 state share).
- Expanding the annual \$10 annual payment processing fee to include IVD cases would result in an additional \$577,910 in fee collections annually (\$196,489 state share).

In FY 2012, there is a potential total annual collection of fees of \$2,464,515 (\$837,935 state share).

Oversight assumes, because the amount of increase in fees collected is speculative, that the FSD might not realize the full savings amount stated in FSD's response. Therefore, for fiscal note purposes only, Oversight has added "Up to" to the fiscal impact.

Section 484.500 (Contingency Fee Contracts approval);

Officials from the **Department of Conservation** state the fiscal impact to the Department is unknown.

In response to identical legislation filed this session (HB 255, 666-01), officials from the **Department of Social Services (DOS)** stated it is anticipated that this bill will have a vast impact upon their agency in that it would cause significant delays in retaining private counsel. Delays of this nature in the setting of complex litigation may carry with it significant negative consequences to the State in the form of increased litigation costs, penalties, etc. Furthermore, it is possible that in some situations there may be only one attorney or law firm that specializes in the type of legal work required by the state agency, and thus, the added steps required to retain their services may unnecessarily drive up the time and costs required to do so.

DOS' Division of Legal Services (DLS) expects an unknown fiscal impact associated with this bill because it is impossible to forecast what legal challenges the department may face in the future. Typically, DLS does not pay for outside counsel; however costs could be incurred by the department or the division that is being sued.

ASSUMPTION (continued)

The bill also states that in no case shall the state incur fees and expenses for legal services in excess of \$250 per hour. State contracts generally fall within that limit; however, there have been some instances where a court ordered DOS to pay more than that. Therefore, there could be a savings for the department if courts could no longer order payment beyond \$250 per hour for legal services as required by this bill.

Officials from the **Department of Transportation (MoDOT)** state specialized legal services don't lend themselves easily to lowest and best bid. If a state agency wishes to enter into a contract for legal services exceeding \$1 million, the contract will be referred to the appropriate legislative committee for its review. Thus requiring legislative approval of any agreement a state agency enters into with private counsel. MoDOT assumes this could create an unknown fiscal impact to the Road Fund.

Oversight assumes the various state agencies will be able to absorb the cost of conducting a competitive bidding process for the retention of a lawyer or law firm to perform legal services where fees and expenses will exceed \$100,000. Oversight also assumes that the number of contracts for legal services that exceed \$1,000,000 will be negligible; therefore, Oversight also assumes agencies will be able to absorb any additional cost associated with subjecting the proposed contract to legislative review. Therefore, Oversight assumes the section of the proposal will not create a fiscal impact to the state.

Sections 559.100, 559.105, & 570.120 (restitution);

Officials from the **Office of Administration - Budget and Planning (BAP)** state this section allows each prosecuting attorney or circuit attorney to collect an additional fee per each crime victim to whom restitution is paid, with the funds being deposited into the Missouri Office of Prosecution Services Funds within the State Treasury from the Administrative Handling Costs Fund within the county treasuries. This section will impact both TSR and 18e. Budget and Planning defers to Office of State Courts Administrator and/or Missouri Office of Prosecution Services for an estimate on how much revenue will be generated by the new fee.

In response to similar legislation filed this session (HB 254, 0591-01), officials from the **Missouri Office of Prosecution Services (MOPS)** stated this bill would have a positive fiscal impact on the Missouri Office of Prosecution Services. The estimated MINIMAL annual impact could be \$41,420. However the impact could greater.

MOPS attempted to survey all 115 counties (which includes the City of St. Louis) as to how many cases in FY2010 that restitution was ordered. It should be noted restitution did not include

ASSUMPTION (continued)

cases of bad checks. Fifty-seven (57) counties responded to the survey. Of those 57 counties, there were a total of 8,284 cases in which restitution was ordered.

Assuming that the other 58 counties all have similar numbers, fiscal impact could be \$83,565 to \$115,020. The theory to determine the fiscal impact of HB 254 on the Missouri Office of Prosecution Services was to survey all counties as to how many cases there were in FY 2010 that restitution was ordered, then, add the total number of cases and multiple times the proposed minimum \$5.00 fee.

Based upon the estimate provided by MOPS, **Oversight** will assume an additional \$100,000 of restitution paid to the Missouri Office of Prosecution Services Fund annually.

Officials from the **Department of Corrections (DOC)** state the court may set an amount of restitution to be paid by the defendant. This bill enhances the restitution statute to include not only tampering and stealing offenses, but for any offense the courts so choose. Once the court orders restitution it is considered a mandate and the DOC is authorized to remove funding from the inmate's account (if it exists) while the defendant is incarcerated. Failure to pay mandated restitution may result in extension to the maximum term of parole which keeps the offender under supervision longer with Probation and Parole (P&P) or a revocation may mean time served in prison. Monitoring offender's restitution payment status is now enhanced for P&P staff since the volume of restitution cases will increase. The cost is unknown for the DOC per each year.

Oversight assumes the cost anticipated by the DOC could exceed \$100,000 each year.

Oversight will assume the proceeds collected into the local Administrative Handling Cost Fund would be used in the same year by prosecuting attorneys and circuit attorneys.

HB 257 as perfected (Section 558.019) - repeal of Sentencing Advisory Commission:

Officials from the **Department of Corrections (DOC)** state it is difficult to estimate an impact on the offender population from the abolition of the sentencing advisory commission. The abolition of the recommended sentences would affect the preparation of the sentencing assessment report by the Board of Probation and Parole. The sentencing assessment report summary includes the recommended sentences and an estimate of the percentage of the recommended sentence that the offender would serve if the offender was sentenced to a prison term. The risk assessment and the estimated times served could continue to be calculated and the

ASSUMPTION (continued)

SAR document amended to exclude references to the recommended sentences without difficulty. Passage of this legislation has the potential to increase the prison population if sentencing reverts to pre-recommended (prior to the SAC) sentencing practices. The estimate for the potential negative fiscal impact is unknown for the DOC per each year.

Oversight assumes the estimated cost assumed by DOC is speculative and based upon potential outcomes of the abolishment of the commission. Oversight assumes this proposal would not have a direct fiscal impact upon the DOC.

Officials from the **Office of the State Courts Administrator (CTS)** state currently, the Judiciary's budget contains an appropriation of \$78,893 for the Sentencing Advisory Commission, which includes one FTE. CTS assumes a savings of \$53,800 (salary plus fringe benefits) and \$43,667 for equipment and expenses for a total savings of \$97,467 per year from this proposal.

The members of the commission shall not receive compensation for their duties on the commission, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. **Oversight** assumes the actual and necessary expenses incurred by the commission members are included in the estimated savings provided by CTS or are a minimal amount.

This proposal could increase Total State Revenues.

<u>FISCAL IMPACT - State Government</u>	FY 2012 (10 Mo.)	FY 2013	FY 2014
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GENERAL REVENUE FUND

Savings - Department of Corrections

Nonviolent offenders sentenced to house arrest with electronic monitoring which is assumed to be reimbursed at a less expensive rate than jail confinement (\$221.025, 221.105, 544.455, 544.470, 557.011)	Unknown	Unknown	Unknown
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<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
<u>Savings</u> - repeal of the Sentencing Advisory Commission for CTS (558.019)			
Personal Service (less 1 FTE)	\$29,430	\$35,669	\$36,026
Fringe Benefits	\$15,404	\$18,669	\$18,856
Expense and Equipment	<u>\$36,389</u>	<u>\$44,759</u>	<u>\$45,878</u>
<u>Total Savings</u> - CTS	<u>\$81,223</u>	<u>\$99,097</u>	<u>\$100,760</u>
 <u>Costs</u> - Department of Corrections Cost for the state to reimburse counties for house arrest via EMP or shackling (§221.025, 221.105, 544.455, 544.470, 557.011)	 (Unknown)	 (Unknown)	 (Unknown)
 <u>Costs</u> - Department of Corrections Increase in caseloads for Probation and Parole staff (§56.089, 302.020, 302.321, 303.025, 311.325)	 (Unknown)	 (Unknown)	 (Unknown)
 <u>Costs</u> - Department of Corrections Potential longer incarceration, potential extension to the maximum term of parole (longer supervision) and additional monitoring of offender's restitution payment status due to removal of limiting restitution to only tampering and/or stealing offenses (§559.100, 559.105, 570.120)	 (Unknown - could exceed <u>\$100,000</u>)	 (Unknown - could exceed <u>\$100,000</u>)	 (Unknown - could exceed <u>\$100,000</u>)
 ESTIMATED NET EFFECT ON GENERAL REVENUE FUND	 Unknown to (Unknown)	 Unknown to (Unknown)	 Unknown to (Unknown)
 Estimated Net FTE Change for General Revenue Fund	 (1 FTE)	 (1 FTE)	 (1 FTE)

FISCAL IMPACT - State Government
 (continued)

FY 2012
 (10 Mo.)

FY 2013

FY 2014

**MISSOURI OFFICE OF
 PROSECUTION SERVICES FUND**

Revenues - Office of Prosecution
 Services

Additional cost from persons paying
 restitution (§56.089, 302.020, 302.321,
 303.025, 311.325)

Unknown

Unknown

Unknown

Income - \$5 per each crime victim to
 whom restitution is paid (§559.100,
 559.105, 570.120)

\$100,000

\$100,000

\$100,000

Costs - Office of Prosecution Services
 Administrative costs (§56.089,
 302.020, 302.321, 303.025, 311.325)

(Unknown)

(Unknown)

(Unknown)

**ESTIMATED NET EFFECT ON
 MISSOURI OFFICE OF
 PROSECUTION SERVICES FUND**

\$100,000

\$100,000

\$100,000

**CHILD SUPPORT ENFORCEMENT
 COLLECTIONS FUND**

Income - Department of Social Services
 (§454.425, 454.548)

Up to
 \$382,479

Up to
 \$837,935

Up to
 \$863,073

Costs - Department of Social Services
 (§454.425, 454.548)

(\$46,618)

\$0

\$0

**ESTIMATED NET EFFECT ON
 CHILD SUPPORT ENFORCEMENT
 COLLECTIONS FUND**

Up to
\$335,861

Up to
\$837,935

Up to
\$863,073

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2012 (10 Mo.)	FY 2013	FY 2014
FEDERAL FUNDS			
<u>Income</u> - Department of Social Services (§454.425, 454.548)	Up to \$742,458	Up to \$1,626,580	Up to \$1,675,377
<u>Income</u> - Department of Social Services (§454.425, 454.548)			
Federal Assistance	\$90,494	\$0	\$0
<u>Costs</u> - Department of Social Services (§454.425, 454.548)			
Decrease in Federal Assistance	(Up to \$742,458)	(Up to \$1,626,580)	(Up to \$1,675,377)
<u>Costs</u> - Department of Social Services (§454.425, 454.548)			
Program Costs	<u>(\$90,494)</u>	<u>\$0</u>	<u>\$0</u>
<u>Loss</u> - MoDOT (§56.089, 302.020, 302.321, 303.025, 311.325)			
Federal Aid	<u>\$0 or</u> <u>(\$30,000,000)</u>	<u>\$0 or</u> <u>(\$60,000,000)</u>	<u>\$0 or</u> <u>(\$60,000,000)</u>
ESTIMATED NET EFFECT ON FEDERAL FUNDS	<u>\$0 or</u> <u>(\$30,000,000)</u>	<u>\$0 or</u> <u>(\$60,000,000)</u>	<u>\$0 or</u> <u>(\$60,000,000)</u>

<u>FISCAL IMPACT - Local Government</u>	<u>FY 2012</u> <u>(10 Mo.)</u>	<u>FY 2013</u>	<u>FY 2014</u>
LOCAL POLITICAL SUBDIVISIONS			
<u>Revenues</u> - Administrative Handling Cost Fund Fees collected for each case that is diverted (§56.089, 302.020, 302.321, 303.025, 311.325)	Unknown	Unknown	Unknown
<u>Revenues</u> - Increase in surcharge Contribution to Prosecution Attorneys and Circuit Attorneys Retirement Systems (§56.807 & 488.026)	\$476,346	\$571,616	\$571,616
<u>Income</u> - Administrative Handling Costs Maximum of \$75 per restitution (§559.100, 559.105, 570.120)	Unknown	Unknown	Unknown
<u>Income</u> - Installment Costs \$2 per installment payment (§559.100, 559.105, 570.120)	Unknown	Unknown	Unknown
<u>Costs</u> - prosecuting attorney or circuit attorney costs to implement provision of the bill in collecting restitution (§559.100, 559.105, 570.120)	(Unknown)	(Unknown)	Unknown)
<u>Costs</u> - Administrative Handling Cost Fund Administrative costs (§56.089, 302.020, \$302.321, 303.025, 311.325)	(Unknown)	(Unknown)	(Unknown)
<u>Expense</u> - Surcharge contribution to Prosecution Attorneys and Circuit Attorneys Retirement System (§56.807, 488.026)	<u>(\$480,460)</u>	<u>(\$576,553)</u>	<u>(\$576,553)</u>
ESTIMATED NET EFFECT ON LOCAL GOVERNMENT	Unknown to <u>(Unknown)</u>	Unknown to <u>(Unknown)</u>	Unknown to <u>(Unknown)</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

Sections 56.089, 302.020, 302.321, 303.025, 311.325

This bill authorizes a prosecuting attorney, upon agreement with an accused or a defendant, to divert a criminal case to a prosecution diversion program for a period of six months to two years allowing for any statute of limitations to be tolled for that period. The prosecution diversion plan must be in writing and for a specific period of time, and the prosecuting attorney may impose conditions on the behavior and conduct of the accused or defendant that assures the safety and well-being of the community and the accused or the defendant. Any person participating in the program has the right to insist on criminal prosecution for the accused offense at any time.

The bill also changes the specified class of certain misdemeanor violations to only be a misdemeanor violation and establishes fines and penalties for a violation of the provisions regarding:

- (1) Driver's licenses;
- (2) Motorcycle helmets;
- (3) Driving while revoked;
- (4) Financial responsibility; and
- (5) Purchase, possession, or consumption of alcohol by a minor

Sections 56.807 & 488.026

Currently, a \$4 surcharge is assessed in all criminal cases including any violation of a county ordinance and any criminal or traffic law including infractions for deposit into the Missouri Prosecuting Attorneys and Circuit Attorneys' Retirement System Fund except under certain circumstances. This bill removes the provision which specifies that no surcharge will be assessed against a person who has pled guilty and paid his or her fine through the central violations bureau requiring this individual to pay the \$4 surcharge.

FISCAL DESCRIPTION (continued)

Sections 221.025, 221.105, 544.455, 544.470 & 557.011

This bill changes the laws regarding house arrest for certain offenders with electronic monitoring or shackling. In its main provisions, the bill:

(1) Allows a judge to place any offender ordered to be confined in the county jail for a nonviolent offense, whether before, during, or after trial, on house arrest as an alternative to jail confinement (Section 221.025, RSMo);

(2) Requires the governing body of any county and the City of St. Louis to establish the amount to be expended for the cost of incarceration of prisoners on house arrest; requires the sheriff or the facility superintendent to certify to the circuit clerk of the county or the chief executive officer of the city the number of days a prisoner accused of a nonviolent offense remained on house arrest; and requires the county commission or the facility superintendent to supply the cost per diem for prisons and for house arrest. If a court or judge places a person accused of a nonviolent offense on house arrest in any case where the state is determined to be liable for the costs, the state must provide reimbursement for the total cost of the house arrest program for that individual (Section 221.105);

(3) Specifies that any person charged with a bailable nonviolent offense who does not post bail prior to his or her appearance before a judge may be placed on house arrest (Section 544.455); and

(4) Allows a court to order a defendant who pleads guilty to or is found guilty of a nonviolent offense and sentenced to imprisonment or a period of detention in a county jail as a condition of probation to be placed on house arrest in lieu of any or all of the ordered period of confinement. The court may also order that in a particular case or with certain types of offenses a defendant cannot be placed on house arrest by the sheriff (Section 557.011).

Sections 454.425 & 454.548

This bill requires the Family Support Division within the Department of Social Services to charge fees for certain child support-related services including:

(1) A nonrefundable \$60 fee to an obligee or obligor who requests the division to review a support order to determine whether a modification of a support order is appropriate;

FISCAL DESCRIPTION (continued)

(2) A nonrefundable fee to an obligee or obligor who requests that the division modify a support order after the division has determined that a modification is appropriate. The fee will be \$175 if the requestor has an individual gross monthly income equal to or greater than 250% but less than 400% of the federal poverty level based on a household size of one or \$350 if the requestor has an individual gross monthly income equal to or greater than 400% of the federal poverty level based on a household size of one;

(3) A \$25 fee for submitting past-due child and spousal support debts for collection through federal income tax refund offset. The fee will only be assessed if the division collects support using the offset; and

(4) A \$10 fee from support received through the payment center for each order for every year or portion of a year during which payments are received by the center. Currently, the division may charge this fee.

The review and modification fees must be waived if the requestor has an individual gross monthly income of less than 250% of the federal poverty level based on a household size of one, if the requestor is or was receiving assistance under a state program funded under Part A of Title IV of the federal Social Security Act, or if the fee is prohibited by state or federal law. The collection fee through tax refund offset is waived if the obligee is or was receiving assistance under a state program funded under Part A of Title IV of the federal Social Security Act or if the fee is prohibited by state or federal law. The division is authorized to change the amount of the review and modification fees by administrative rule based on actual standardized costs in accordance with state rules and regulations.

Section 558.019;

This section repeals the provisions regarding the Sentencing Advisory Commission.

Sections 559.100, 559.105 & 570.120

This section requires restitution to be paid through the office of the prosecuting or circuit attorney. Each prosecuting or circuit attorney who takes action to collect restitution must assess the person paying restitution an administrative handling cost of \$25 for restitution in an amount of less than \$100, \$50 for an amount between \$100 and \$249, and an additional fee of 10% of the total restitution for an amount of \$250 or more. The maximum fee for administrative handling costs cannot exceed \$75. A \$2 installment cost must also be assessed for each installment payment, except for the first installment, until the amount of restitution is paid in full.

FISCAL DESCRIPTION (continued)

The moneys collected by the prosecuting or circuit attorney must be deposited into the newly created Administrative Handling Cost Fund to be expended by the prosecuting or circuit attorney for office supplies and equipment, capital outlay, trial preparation expenses, additional staff, and employees' salaries.

In addition to the administrative handling cost, the prosecuting or circuit attorney must collect \$5 for each crime victim to whom restitution is paid to be deposited into the Missouri Office of Prosecution Services Fund.

Court-ordered restitution may be taken from an inmate's account at the Department of Corrections while the inmate is incarcerated; and upon release from imprisonment, the payment of any unpaid balance may be collected as a condition of conditional release or parole.

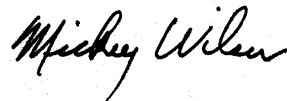
This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Attorney General
Department of Agriculture
Administrative Hearing Commission
Office of Administration - Budget and Planning
Office of Administration
Office of the State Courts Administrator
Department of Economic Development
Department of Elementary and Secondary Education
Department of Higher Education
Department of Transportation
Department of Insurance, Financial Institutions and Professional Registration
Department of Mental Health
Department of Natural Resources
Department of Corrections
Department of Health and Senior Services
Department of Labor and Industrial Relations
Department of Revenue
Department of Social Services
Department of Public Safety
Missouri Lottery

SOURCES OF INFORMATION (continued)

Department of Conservation
Missouri Ethics Commission
MOSERS
Office of Prosecution Services
Office of the State Auditor
Missouri Senate
Office of the Secretary of State
Office of the State Public Defender
Office of the State Treasurer
Office of the Governor
Prosecuting Attorneys and Circuit Attorneys Retirement System
Joint Committee on Public Employee Retirement
St. Louis County
Platte County
St. Louis Prosecuting Attorney



Mickey Wilson, CPA
Director
April 22, 2011